E. B. JOINER

IBLA 82-1201 Decided January 24, 1984

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offers FF 291, FF 292, FF 309, FF 320, and FF 331.

Affirmed.

1. Mineral Leasing Act: Generally -- Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Competitive Leases

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a favorable petroleum geological province, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as modified by the Alaska National Interest Lands Conservation Act.

APPEARANCES: E. B. Joiner, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

E. B. Joiner has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 24, 1982, which rejected his noncompetitive oil and gas lease offers FF 291, FF 292, FF 309, FF 330, and FF 331, because the lands applied for are located within the Cape Lisburne Province which has been classified as a favorable petroleum geological province (FPGP) pursuant to section 1008 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3148 (Supp. IV 1980), and, therefore, can only be leased by competitive bidding.

In his statement of reasons, appellant objects to BLM's change from noncompetitive leasing to a competitive bid situation stating, inter alia:

> Applications were made before any commercial oil was discovered in the area of Northern Alaska. At the time the Government accepted our money for these leases, no provision was made for

> refunding it if the leases proved worthless. Now, many, many years later, when it appears the leases are valuable, the Secretary of the Interior changed the rules of the game and wishes to confiscate the leases. We feel the rules should be the same now as at the time we paid down our money and it was accepted, deposited in the General Fund and has been used these many years by the Government.

The record shows that appellant originally filed his simultaneous oil and gas leasing entries in late 1966 for various tracts of land in secs. 27, 28, 33, and 34 in T. 2 S., R. 42 W., Umiat principal meridian, Alaska. While appellant did tender the rentals as then required by the applicable regulations, 43 CFR 3123.9(c)(2) (1967), no lease ever issued. The lease offers were held in suspense until 1981 pending resolution of Alaska Native claims questions, when the lands involved were classified as part of the Cape Lisburne FPGP. 1/

This land was designated as an FPGP pursuant to section 1008 of ANILCA, 16 U.S.C. § 3148 (Supp. V 1981), which directs the Secretary of the Interior to establish an oil and gas leasing program for applicable Federal lands in the State of Alaska pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. § 226(b) (1976), as modified by ANILCA. As the Alaska State Office correctly pointed out, section 1008(d) of ANILCA specifically provides "areas which are determined by the Secretary to be within favorable petroleum geological provinces shall be leased only by competitive bidding."

The designation of the Cape Lisburne Province FPGP, dated November 20, 1981, was published in the Federal Register on December 4, 1981 (46 FR 59316-59318).

That notice emphasized the purpose of the classification stating:

> While the FPGP nomenclature is new, the purpose of the FPGP classification is similar to that of the Known Geological Structures (KGS's) classification under the Mineral Leasing Act, i.e., the

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1/ The long delay in adjudication of these lease offers was, to a large extent, the result of circumstances beyond the Department's control. As the Department noted in James W. Canon, 84 I.D. 176 (1977), the lands involved were opened for the filing of simultaneous offers on Sept. 23, 1966. Various Native groups filed protests against lease issuance. On Nov. 28, 1966, the Department issued a press release which stated that it had determined to proceed with the drawing but not to issue any leases until the Native protests were resolved. This policy was subsequently confirmed in a Federal Register notice signed by the Secretary on Dec. 1, 1966. See 31 FR 15494 (Dec. 8, 1966). Subsequent to the adoption of the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, 43 U.S.C. § 1601-1628, in 1971, the offers continued in their suspense status pending resolution of numerous problems generated by that Act. Finally, in 1981, Congress adopted ANILCA, whose provisions control the adjudication of this appeal.

> purpose of these classifications is to identify which lands are to be leased competitively. However, the criteria to be applied in making these two classification actions are different. The KGS classification applies to the immediate structure of a known producing or producible oil and gas field. The FPGP classification applies to a total province encompassing many possible specific structures or traps, and does not necessarily require the past or present existence of a producing or producible well.

[1] Contrary to appellant's wishes, the long BLM delay in acting on his offers does not entitle him to leases. The Secretary of the Interior is invested by the Mineral Leasing Act of 1920 with discretionary authority to lease or not to lease Federal public land which is otherwise available for oil and gas leasing. Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960); Dorothy Langley, 70 IBLA 324 (1983); Justheim Petroleum Co., 67 IBLA 38 (1982). The mere fact that appellant's oil and gas lease offers were pending at a time when the land was available for leasing does not invest the offeror with any legal or equitable title, claim, interest, or right to receive the lease where, during the pendency of the offer, the land becomes unavailable to such leasing either by reason of the exercise of Secretarial discretion or by operation of law. The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Udall v. Tallman, supra; McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, supra at 666; D. R. Gaither, 32 IBLA 106 (1977) aff'd sub nom. Rowell v. Andrus, Civ. No. 77-0106 (D. Utah Apr. 3, 1978), aff'd in part and rev'd in part on other grounds, 631 F.2d 699 (10th Cir. 1980).

Appellant does not assail the classification of the Cape Lisburne Province as an FPGP. In any event, in our recent decision in Asamera Oil, Inc., 77 IBLA 181 (1983), we examined the circumstances surrounding this designation and expressly affirmed it. Having been determined to be an FPGP, BLM could not properly issue leases in response to noncompetitive oil and gas lease offers.

Appellant's noncompetitive lease offers were properly accorded the same consideration as in situations where lands had been determined to be within a KGS of a producing oil or gas field during the pendency of other noncompetitive offers. In such circumstances, the noncompetitive lease offer must be rejected as to those lands. Hepburn Armstrong, 72 IBLA 329 (1983); Lida R. Drumheller, 63 IBLA 290 (1982); Richard J. DiMarco, 53 IBLA 130 (1981), aff'd, DiMarco v. Watt, Civ. No. 81-2243 (D.D.C. Mar. 25, 1982). This Department has no discretion under the law to issue a noncompetitive lease for lands classified as within an FPGP. See McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

Similarly, since appellant's lease offers were still pending on the date the Cape Lisburne Province was designated, the lease offers must be rejected because the description of the lands within Cape Lisburne Province foreclosed their availability to the issuance of noncompetitive oil and gas leases as a matter of law. Cf. CAF Co., 73 IBLA 203 (1983); Dorothy Langley, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski
Administrative Judge

We concur:

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Anne Poindexter Lewis
Administrative Judge

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C. Randall Grant, Jr.
Administrative Judge